IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 656 OF 1983

M/s. Sitaram & Co. .... Plaintiffs.

vs.

Indian Silk Mfg. Co. .. Defendants.

Mr. Prashant Prabhu for plaintiffs.

Mr. Neel Helekar for defendants.

CORAM : S.U.KAMDAR, J.

DATE : 21st June, 2005.

P.C.

. The present suit is filed for recovery of Rs. 4,02,763.27 along with interest at the rate of 12% on the principal amount of Rs. 2,61,763.27 from the date of the filing of the suit till payment and/or realisation. In nut shell the case of the plaintiffs can be summarised as under :

2. The plaintiff is a partnership firm and pursuant to the orders placed by the defendants from time to time, sold and delivered grey cloth fabrics to the defendants under various invoices. The defendants received the said goods and did not raise

any dispute as to the quantity or quality thereof. It is the case of the plaintiffs that the defendants also issued a letter dated 14.8.1979 that the defendant will honour the bills of the plaintiffs and discounted to the bank in respect of the said goods sold and delivered. However, the defendant did not make payment of the various goods sold and delivered from time to time. It is the case of the plaintiffs that at the foot of the account there is an amount outstanding as on the date of the filing of the suit in the sum of Rs. 2,61,763.27. On the aforesaid basis the present suit has been filed.

3. The plaintiffs have tendered the documents which are taken on record and marked Exhibit P-1 collectively. The plaintiffs have also tendered the affidavit of evidence of one Mr. Syamsunder S. Bidawatka, the partner of the plaintiffs firm. The same is also taken on record. On 3.11.2003 the issues are framed by the learned Single Judge of this Court which are as under :-

"1. Whether the plaintiff proves that the plaintiff had sold and supplied fabric materials to the defendant as per the other of the defendant and raised various invoices on the defendant?

2. Whether the plaintiff proves that the Defendant had duly accepted all the above mentioned materials sold by the plaintiff to the defendants as per the invoices and the delivery challans?

3. Whether the plaintiff proves that the defendant is liable to pay to the plaintiff as prayed for in the plaint?

4. Whether the defendant proves that the claim of the plaiting is time barred by law of limitation?

5. Whether the defendant proves that the goods sold and delivered by the plaintiff were defective, inferior in quality and quantity, not as per the order placed by the defendant and the goods were not delivered in time by the plaintiff?

6. Whether the defendant proves that the cheques issued by the defendant to the plaintiff were not for the payment of the invoice amount but it were for some other reason?

7. What order and decree?"

4. The learned advocate appearing for the defendant states that he has been instructed by his client not to appear in this matter and as such he is not appearing in the matter any more and he has no instructions in the matter. The matter was adjourned on many occasions. Though the defendant has instructed the advocate not to appear, they were aware that the suit is on the Board. They have not made any alternative arrangement for any other advocate. In the circumstances, the matter is proceeded with. The matter was on board on 6.6.2005. It was adjourned for recording evidence on 20.6.2005. The matter is again adjourned to today. The defendant has made no arrangement for any other person nor is appearing in person. In view thereof, the present suit is required to be considered ex-parte.

5. The only defence raised by the defendant in the written statement is that the goods were not in accordance with the specifications and are of inferior quality. However, the defendants have failed to prove the said defence. The evidence of the partner of the plaintiffs is unchallenged and in view thereof, the same is required to be accepted. However, in

so far interest is concerned, the plaintiffs have claimed interest at the rate of 12% per annum. The learned advocate appearing for the plaintiff fairly agreed that there is no agreement to claim interest at the rate of 12%. The plaintiff is accordingly not entitled to the interest on the principal amount of Rs. 2,61,763.27 and therefore, the claim for interest is disallowed. However, the plaintiff has given notice through advocate dated 13.6.1980 and on page 7 of the said notice they have demanded interest at the rate of 12% per annum. In view of the fact that by Advocate's notice the interest at the rate of 12% is demanded, the plaintiffs are entitled to interest from 13.6.1980 under the Interest Act and, therefore, I pass the following order :-

> There shall be a decree in favour of the plaintiffs and against the defendants for the sum of Rs. 2,61,763.27 with further interest at the rate of 12% from 13.6.1980 till payment and/or realisation.

6. Suit disposed of accordingly. No order as to costs.